SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM: PART 85

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PEOPLE OF THE STATE OF NEW YORK

SORA Hearing

-against-

Indictment No.
00745-1990

SAMUEL SANCHEZ,

Defendant.

----------x

New York Supreme Court
111 Centre Street
New York, New York 10013

September 14, 2016

B E F O R E:

HONORABLE ROGER S. HAYES, Justice of the Supreme Court

A P P E A R A N C E S:

FOR THE PEOPLE:

CYRUS R. VANCE, JR., ESQ.
District Attorney of New York County
BY: DAVID FILER, ESQ.

FOR THE DEFENDANT:

CENTER FOR APPELLATE LITIGATION
Attorneys for Defendant
BY: LAUREN SPRINGER, ESQ.
MOLLY SCHINDLER, ESQ. (via video conference)

Lisa Mango
Senior Court Reporter

that is why I pointed that out so that whatever decision I make will not be dependent on a non-professional medical person's medical prognosis for the future.

I said it respectfully, but I do grasp that point.

MS. SPRINGER: Okay.

THE COURT: You know, I take that part of what the assistant intended was that I know every time either myself or anyone else who has been hospitalized gets out, just getting out is kind of a boost in a familiar setting, a comfortable setting. But your point is well made.

MS. SPRINGER: Thank you.

I just wanted to point out one other thing too. With respect to the risk level three, if Mr. Sanchez is adjudicated a risk level three, he will be subject to the SARA as I mentioned.

But if housing or appropriate placement cannot be found, even though he was granted medical parole, he will remain in prison until such time that that housing can be found, which is what has happened so far. That is up until he reaches his maximum expiration date and his maximum expiration date is not until October 20, 2030.

THE COURT: Look, as far as the inability to place Mr. Sanchez if he is a level three, that is a terrible dilemma. As I said, I have an Article 10 matter that is currently being argued before the Court.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK : CRIMINAL TERM : PART 85

----------X

THE PEOPLE OF THE STATE OF NEW YORK :Ind. No. 745-90

- against - :

SAMUEL SANCHEZ, : HEARING

Defendant. :

----------x

100 Centre Street

New York, New York 10013

October 20, 2016

B E F O R E:

HONORABLE ROGER HAYES,
Justice Supreme Court.

A P P E A R A N C E S:

For the People:
CYRUS R. VANCE, JR., ESQ.
District Attorney - New York County
BY: DAVID FILER, ESQ.
Assistant District Attorney

For the Defendant:
CENTER FOR APPELATE LITIGATION
LAUREN SPRINGER, ESQ.
MOLLY SCHINDLER, ESQ.

MAUREEN POSTEL
SENIOR COURT REPORTER

THE CLERK: Continued Sex Offender Risk Assessment, Indictment 745-90, Samuel Sanchez. Mr. Sanchez is not yet before the Court.

Appearances please.

MS. SPRINGER: Lauren Springer, Center for Appellate Litigation for Mr. Sanchez.

THE COURT: Good morning.

MR. FILER: For the People, David Filer, good morning.

THE COURT: So far we're waiting to have Mr. Sanchez produced for the -- to be present for the hearing. I take it when I say produced by video that you want to wait until he's produced?

MS. SPRINGER: Yes, your Honor.

THE COURT: I just didn't want us to be waiting and we're already.

A VOICE: Mr. Sanchez will be here shortly.

THE COURT: Thank you.

Counsel, is that Mr. Sanchez?

MS. SPRINGER: Yes.

THE DEFENDANT: Good morning, I'm waiting for my lawyer.

MS. SPRINGER: My colleague, Molly Schindler, S-C-H-I-N-D-L-E-R, is also going up this morning to sit with him as part of the hearing.

THE COURT: Ms. Springer, do you know where your colleague is?

THE DEFENDANT: They went to go get her.

MS. SPRINGER: They went to go get her. She had an appointment at 9:00 a.m. with someone else at the facility.

THE COURT: Okay, we'll wait.

MS. SCHINDLER: Sorry for the delay.

THE COURT: That's all right.

Ms. Springer, you have the witness you wish to call?

MS. SPRINGER: Yes, I do. I'd like to call Dr. John Hammer to the stand.

THE COURT: H-A-M-M-E-R?

MS. SPRINGER: Yes.

THE OFFICER: Raise your right hand.

THE CLERK: Do you solemnly swear the testimony that you give now will be the truth, the whole truth, and nothing but the truth so help you God?

THE WITNESS: I do.

THE OFFICER: State your first name and last name and spell your last name for the Reporter.

THE WITNESS: John Hammer, H-A-M-M-E-R.

THE COURT: Okay.

DIRECT EXAMINATION

BY MS. SPRINGER:

Q I'm going to ask that when you speak you use the microphone so that Mr. Sanchez can hear you, which is one of the things that we were cognizant. So we're trying to make sure that he can hear us.

What do you do for a living, Dr. Hammer?

A I'm a physician in internal medicine.

Q Internal medicine.

What kind of training have you had?

A I attended medical school in 1980, graduated 1980, that was followed by Fifth Pathways, which is the program which proceeds residency for foreign medical graduates. I did a residency in internal medicine in Booth Memorial Hospital.

Q What school did you graduate from?

A Far Eastern University.

Q Where is that?

A The Philippines.

Q So you said you graduated in 1980?

A Right.

Q And are you licensed in New York state?

A Yes, I am.

Q And when did you get your license?

A I believe it was 1982.

Q Where are you currently employed?

A New York State Department of Corrections, Fishkill Correctional facility in Beacon, New York.

Q How long have you been employed there?

A I've been there since 2004.

Q And where else have you worked?

A I've been in private practice since 1991. In 2004 when I began working part-time at the prison I gradually phased out the internal medicine practice and I think totally finished that in 2010.

Q And what are your duties and responsibilities in your current position?

A At Fishkill Corrections Facility I've been in charge of the Long Term Care Unit since 2004 for the past year or so. I've also been responsible for the Unit for the Cognitively Impaired, and more recently I've also had to cover the infirmary. We have somewhat of a staff shortage for the moment, but for the most part the Long Term Care Unit.

Q And do you know Mr. Samuel Sanchez, which is DIN number 91A5961?

Is it difficult to hear me?

A There is, I'm getting it.

MS. SPRINGER: Can you hear me, Mr. Sanchez?

THE DEFENDANT: Yes.

Q So, I'm sorry, so how do you know Mr. Sanchez?

A Mr. Sanchez first came to the Long Term Care Unit in

late December 2009, shortly after his stroke. He stayed 'till somewhere in 2011 when he was transferred to the Unit for the Physically Disabled at Greenhaven Correctional Facility. He returned to us in November 2015.

Q And how are you involved -- how are you involved in Mr. Sanchez' care?

A Well, all the patients under Long Term Care Unit, there are 30 of them, I'm responsible for their care; referrals for specialists if it's so needed, and any medical issues that arise concerning any of the inmates there would be my responsibility to handle.

Q And what can you please tell us about Mr. Sanchez' medical condition?

A Well, Mr. Sanchez has a number of conditions. If we want to begin chronologically we might say that he has neurogenic bladder.

Q What does that mean?

A It means that he is unable to sense that when he has to urinate. The nerve supply to the bladder has been damaged. And I believe that was from a gun shot wound in the distant past. As a consequence he has to self catheterize in order to urinate. Since he can't feel the urge to urinate he relies on what we call a shake away. It's a little alarm that vibrates, and he can set it to any interval of hours, and based on that he would catheterize himself.

He also has the stroke as we mentioned. That occurred in 2009, December. As a result of that he's paralyzed on the right side.

He also has severe degenerative joint disease, especially involving the lumbosacral spine for which he uses a TENS Unit, which is an electronic device that helps to relieve pain.

He has hypertension, his cholesterol is a little high. He has a pace maker for erythema.

He has sleep apnea for which he uses his C-PAP machine, which is a continued positive pressure breathing device at night.

He has obesity, that's something that comes with the stroke and immobility and sedentary lifestyle.

THE COURT: What was the last issue?

THE WITNESS: Obesity.

Q And you said it comes with the stroke?

A It comes from sedentary lifestyle, which is very easy to happen in prison, especially if you had a stroke and you're mobility is limited.

He also has a severe bilateral hearing loss for which he uses special hearing aides that are wireless. I think I probably covered everything with that.

Q How much of the obesity is connected to his diet?

A Well, in the prison system many diets are available. We have a dietitian who overseas this sort of thing. But the

inmates are able to change their diet, and they can choose a diet that may not be appropriate for them in certain cases. It's been my observation that in general the calories that are provided in the regular diet usually far exceed what an individual would need on a daily basis. So the tendency to gain weight is there.

Inmates are also able to purchase what we call commissary. These are items that they can buy on there own. And they usually come once a week.

Mr. Sanchez I believe is on a low fat/low cholesterol diet. I think he's been compliant with that. So the weight gain is almost inevitably in the prison setting, especially if you're hindered by lack of mobility from a stroke.

Q Is the paralysis from the stroke, is that reversible?

A No. Once a stroke has occurred, if you call it a stroke that means after 24 hours the neurological deficits that have occurred are no longer reversible. If they do reverse themselves within 24 to 48 hours then its called a TIA, transient ischemic attack.

Mr. Sanchez' deficits are permanent.

Q What are his physical capabilities or limitations? What can he do, physically or not do?

A Well, he's able to transfer himself from bed to chair with minimal or no assistance. He's able to shower himself. He can perform most of what we call ADLs. Activities of daily

living without assistance. So he's fairly independent in that sense.

But once in the wheelchair he has difficulty immobilizing himself. He has the use of only the left arm, and some people in wheelchairs can propel themselves to some degree using their good leg. But he's very limited in that capacity. So he usually needs help in pushing the wheelchair.

Q Can you describe a typical day for Mr. Sanchez? I don't know if you see him on a daily basis. I guess what I'm asking do you know how he spends his days? Is he usually in wheelchair, in bed? Do you have any idea?

A Fair idea, I see him almost everyday. I pass the room a dozen, at least, everyday. He spends a lot of his time in the room.

We do encourage inmates to get out of the bed. And even if they're not limited by a stroke a tendency is to spend more hours in the bed than you normally would.

But Mr. Sanchez gets up when he can. When he's in the wheelchair he gets assistance to the day room. And, again, he can transfer himself, so I think he's limited in the number of hours he can stay in the chair due to his back pain. That comes from the degenerative disc disease.

Q Is that arthritis? Is that something like arthritis?

A It's arthritis, it's some misalignment of the spine you might say, things that occur with age, mostly arthritic

type of issues.

Q And what medications does Mr. Sanchez take?

A Well, it's hard for me to recall everything off the top of my head. He's on antihypertensive medication.

Q I'm sorry?

A Blood pressure, antihypertensive, he's on pain medication. He's on medicine to lower his cholesterol, something to help with urination I believe.

THE COURT: How old is Mr. Sanchez?

MS. SPRINGER: You're still 54, Mr. Sanchez? You haven't had a birthday since the last hearing, right, 54?

THE DEFENDANT: Yes.

MS. SPRINGER: Yes, 54 years old.

THE COURT: Thank you.

Q What would happen -- he takes these medications on a daily basis?

A Yes, he does.

Q What would happen if he stopped taking these medications?

A Well, all the risk factors that produced a stroke would reassert themselves and he might have another stroke or heart attack.

Q And Mr. Sanchez has been in a wheelchair since having the stroke, so that goes back to 2009 or he's always been in a

wheelchair since --

A Yes.

Q And what are your expectations for Mr. Sanchez' physical progress? What do you expect to happen in the future with him physically?

MR. FILER: Objection, I'm not -- I'm unclear. Does she mean within the prison system, once he gets out? I'm not sure what we're getting at here.

MS. SPRINGER: Oh, we'll break it; up in the prison system.

A What are my expectations?

Q Yeah, if he stays in the prison system?

A In terms of changes?

Q Yeah, what kind of changes would you expect in the prison system if he just stays in prison? Do you expect his condition to get better?

THE COURT: I know it's hard for the witness is over here.

A In terms of his physical conditions, none of the things we mentioned will show improvement. He could lose weight with proper dietary guidance and caloric restriction. But the stroke can't been reversed. The hearing can't be corrected. But the hearing aides will probably help with that. In other words, I don't expect him to gain anymore mobility than he already has.

Q What would surgery -- and you said that the paralysis was permanent, so surgery would not improve -- he wouldn't be able to regain his ability to move with surgery?

MR. FILER: Objection, again, I'm not sure if we're talking about current environment or upon his release?

MS. SPRINGER: We can break it up.

MR. FILER: Okay. So let's break it up.

THE COURT: I appreciate that parties don't seem to feed on each other, they resolve things by themselves when there's an objection. But the objection is sustained. You can rephrase it.

I think it's clear that, at least, initially Counsel is asking a series of questions, assuming that the defendant remains in prison. And then if she wishes she can ask a second series of questions if the defendant is released. So the objection is sustained.

Q Assuming Mr. Sanchez remains in prison, is there any possibility of his physical condition improving?

A I think not.

MR. FILER: Objection, because I'm not sure what "physical condition" means. Are we talking about the stroke? Are we talking about the sleep apnea? Are we talking about back pain, weight loss, his general physical condition? Again, I don't believe --

THE COURT: The objection is sustained. If you could break it down?

Q I'm going to go through the list of medical conditions that you said that Mr. Sanchez is suffering from. The question is this, assuming that he remains in prison, is there any possibility of his neurogenic bladder improvement?

A None.

Q Any possibility, assuming he remains in prison, any possibility of the paralysis that he has, if he remains in prison improving?

A None.

Q Any possibility of the degenerative joint disease improving, assuming he remains in prison?

A None.

Q Assuming he remains in prison, is there any possibility of his hypertension improving?

A Well, with medication it's controlled.

Q Assuming that he remains in prison, is there any possibility of his high cholesterol condition improving?

THE COURT: You said assuming he remains in prison?

Q Assuming he remains in prison?

A As long as he remains compliant with his medication it shouldn't worsen, that's also controlled.

Q Assuming he remains in prison, is there any

possibility of his erythema improving?

A Again, that's difficult to say. With time things can happen, but he has the pace maker.

Q Assuming he remains in prison, any possibility of his sleep apnea improving?

A I wouldn't expect that to improve, but, again, he uses the C-PAP machine, that also is stable.

Q Assuming he remains in prison, is there any possibility of him dealing with his obesity issues of him losing wait?

A That's a possibility.

Q Assuming he remains in prison, is there any possibility of his severe bilateral hearing loss improving?

A None.

Q Now, I am going to switch to when should he be released. When he's released I'm going to go through --

THE COURT: There might be an easier way. Assuming the defendant is out of prison would your answers to any of those questions just asked of you be different?

THE WITNESS: I think not, no.

Q Now, I understand Mr. Sanchez was granted medical parole?

A That is correct.

Q What was your involvement in that process?

A I submitted the certification, its called. And this is addressed to the chief medical officer, Dr. Coningsman. And on that form it illustrates the diagnosis, and if the conditions are expected to remain stable, deteriorate or improve, and any change in his condition which may have occurred since the last application. This is submitted then to the chief medical officer who either approves or disapproves. If he disapproves then it stops there. If he approves then it goes on to the parole board for that approvement.

MS. SPRINGER: Sorry, I was just looking for the medical parole, application report that you had produced.

THE COURT: You want the minutes before --

MS. SPRINGER: I have the --

THE COURT: You want the minutes?

MS. SPRINGER: No, there was actual -- Dr. Hammer's parole report, I mean medical parole evaluation. So it was separate from the minutes. But I had submitted it to the Court and given a copy to the ADA for the last appearance.

THE COURT: I have a New York State Department Correctional Services Health Service System medical problem history, is that what you were referring to or something else?

MS. SPRINGER: Yeah, it's connected to that,

yes. Medical problems and listed in the back of that I believe, yeah.

THE COURT: You want my copy or you have your copy?

MS. SPRINGER: Yes, can I borrow your copy actually? Because I would like Dr. Hammer to read it while we're --

Q This is a copy of the document, the comprehensive medical summary. Is this something that you prepared? It's at the back.

THE COURT: Counsel, you got to speak in the microphone. You can move the microphone.

A I don't see the medical parole application.

Q No, not the Medical Parole Application. Did you prepare the Comprehensive Medical Summary?

A No, I signed it at the end, but that's usually done by the nurse whose name is above mine.

Q Okay, so the nurse prepared it.

Okay, so did you review what the nurse did?

A Oh, yeah, absolutely, I assisted in filling this form out.

Q Okay.

A This is what's called a -- we call a CMS. Any time a patient is transferred to or from a Correctional Facility to our unit he comes with a CMS. And when you apply for medical

parole you have to include one of these.

Q This is what was included in the medical parole?

A Well, I signed it March 2nd. It could be I'd have to see the medical parole application to see the date on that. It could very well be the one.

Q Okay.

So in terms of reviewing the Comprehensive Medical Summary --

A I believe a lot of it we had gone over today in court.

Q Can we do the diagnosis? You said you listed what was chronic conditions, what had shown continued deterioration, right? Is that information still accurate as far as his present condition?

A Yes.

Q On page three was noted about the kind of care that Mr. Sanchez would need on the level of care application. It's noted that he's been assessed for residential health care placement. Could you explain that a little bit?

A Well, again, these CMS forms that we're scrutinizing now could be improved quite a bit. This particular section, part two, Residential Health Care Placement would imply either a nursing home, skilled nursing facility or assisted living. So this is broader than it would necessarily be. In other words, there's more specific categories under that.

Q What's your understanding of what Mr. Sanchez actually needs?

A Well --

Q What kind of care does he need?

A I would think that he would do well in a nursing home setting given all the conditions we spoke about, the limitations of the stroke. He is relatively young you might say for that sort of environment. But he possibly could meet these needs in a family situation, depending if there was wheelchair accessibility and, you know, people to attend to needs as they might arise.

Q So it's possible he could live in a residential with family then, it's possible?

A It's possible.

Q What kind of care would he need if he resided with family?

A Well, he'd need someone to be there observing him a good portion of the day, if not the entire day. He does need to have access to the urinary catheters. He occasionally needs batteries for his hearing aides or TENS Unit. The TENS Unit has special adhesive attachments, you might call it, that need to be changed each day. As I said, he's independent in his ADLs, but we need someone to do the cooking and the cleaning and the laundry and that sort of thing.

Q Does he need help with showering?

A He showers pretty much independently.

Q Does he need help with grooming?

A Grooming, no.

Q And when you say "someone would need to observe him a good portion of the day", how long would -- how long can he be left on his own, or would it be wise to leave him on his own?

A It's a hard thing to say. You're looking at someone who has had a stroke. If some mishap occurred, anything occurring in the house, a fire, a need to leave the house for other reasons, someone would need to be there most likely to assist him with that.

Q But in your assessment what would be the ideal setting for him.

A I would have to say, ideally, some sort of assisted living, even a step down from a skilled nursing home.

Q What would be the difference between assisted living and a skilled nursing home?

A Well, the level of care mainly. Someone in the assisted living is fairly independent. They usually go shopping on their own. Sometimes they have their own transportation. This wouldn't be the case here. But it's assisted living for people who are more or less independent.

Q You've had an opportunity -- you mentioned that you see Mr. Sanchez daily in the prison. You had an opportunity to basically observe how he interacts with the staff, how he

interacts with you; has he ever been sexually inappropriate with the staff as far as you've known him or since he's been under your care?

A I didn't catch -- has he been --

Q What are his interactions with his staff like?

MR. FILER: Objection, objection.

Q You know the answer to the question is this, is he sexually inappropriate with the staff?

MR. FILER: Objection.

A No, I never witnessed anything of that nature, no.

Q On the same Comprehensive Medical Summary there's a section that says behavioral status, it's checked appropriate. This is page two. Do you have any idea what that would be referring to?

A I'm sorry, what are we looking --

Q Page two, Comprehensive Medical Summary, CMS, item number seven.

A Behavioral status?

Q Yes.

A Appropriate is checked.

Q What does that mean?

MR. FILER: Objection, again, I'm not sure if the Doctor filled out this form or how he can comment on what somebody else checked on the form.

A Well --

THE COURT: Objection is overruled.

A I recognize the check. It was myself who checked that particular box.

What does that mean?

Q Yes.

A Well, again, the words sort of speak for themselves. He has not been inappropriate in any way in terms of using profanity or -- well, disruptive behavior of any sort.

Q Are you aware of any incidents where he's been aggressive with the staff?

A I'm not aware of any such incident, no.

Q Now, you've mentioned before, okay, in a conversation with me, but also in court you mentioned, okay, you knew Mr. Sanchez in 2009 when he first had his stroke. And then you've -- he's come back to your facility in 2015 and everything. You mentioned to me that he's not the same person, that he's changed. So can you explain -- can you just give clarification on that?

MR. FILER: Objection.

THE COURT: Overruled.

MR. FILER: Judge, what "is not the same person" mean? It's so vague.

MS. SPRINGER: What do you --

THE COURT: No, no, one just --

MR. FILER: The question seems profound.

THE COURT: You did hear my ruling.

MR. FILER: Objection, of course.

THE COURT: Good, the witness can answer the question. Go right ahead.

THE WITNESS: Thank you.

A In 2009, as I recall, when Mr. Sanchez first came to the Long Term Care Unit it was immediately after the stroke.

When a man in his early 50s has a stroke this is a little bit difficult to come to grips with, you might say. So there may have been some latent anger and that sort of thing.

In those days he was -- you might use the term somewhat demanding in terms of he needed a lot of reasonable accommodations, what they're called in the prison system. This refers to the hearing aides, amplifier for the telephone, reach extender, which is a little grip device, which extends to reach about a foot and a half and has a pincer at the end, the TENS Unit, as I mentioned, for the back pain. So we went through that sort of thing, but, again, it was for the most part -- it wasn't disrespectful or disruptive to the ward in general.

Q And how much since --

A Well, he grew a beard, he gained weight, he's a lot more polite and respectful at this point, he's compliant with medication, he doesn't antagonize the staff or get himself involved in verbal disputes, that sort of thing.

SUPREME COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: PART 85

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THE PEOPLE OF THE STATE OF NEW YORK : SCI NO.

:

-against- : 0079/1990

SAMUEL SANCHEZ, :

Defendant.

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100 Centre Street
New York, N.Y. 10013
December 1, 2016

B E F O R E:

HONORABLE ROGER HAYES, Judge.

A P P E A R A N C E S:

FOR THE PEOPLE:
CYRUS R. VANCE JR., ESQ.
DISTRICT ATTORNEY
NEW YORK COUNTY

BY: DAVID FILER, ESQ.

FOR THE DEFENDANT:
CENTER FOR APPELLATE LITIGATION
120 WALL STREET
NEW YORK, NEW YORK

BY: LAUREN SPRINGER, ESQ.

ALEXANDER BENT
SENIOR COURT REPORTER

guidelines.

And the second factor, establishing the facts in support of it's existence by a preponderance of the evidence, People versus Watson, 95 AD3d 979.

In the Court's opinion, the defense has met it's initial burden of identifying, as a matter of law, an appropriate mitigating factor, and that is the defendant's serious and limiting medical issues.

See People versus Hosear, H-O-S-E-A-R, 134 Appellate Division 3d 633. That's a First Department decision, December 29th of 2015.

The issue now becomes whether or not defense has established the facts in support of it's request by a preponderance of the evidence.

Let's talk about the defendant's medical conditions:

In April of 2016, the defendant appeared before the New York State Department of Corrections and Community Supervision Board of Parole for a hearing pursuant to New York State Executive Law 259s, release on medical parole, or inmate suffering significant debilitating illness. In today's argument, defense counsel said he also appeared on October of 2016, with the same result.

At the hearing, the board members reported that the COMPAS risk assessment for the defendant put him at a low risk across the board for felony violence, arrest, or

absconding if the Board took him off parole.

At the parole hearing, the defendant said that in 2009 he had two strokes. He appeared at the hearing in a wheelchair, and using oxygen. The Board noted that he had completed sex offender treatment.

And they also noted from his medical history, and I now quote from page 9 of that hearing, where the Board said they had a medical report on file from the chief medical officer of the department, Dr. Koenigsman, K-O-E-N-I-G-S-M-A-N, dated March 9, 2016; I am now quoting from the minutes of the parole hearing, which were quoting a report by that doctor:

Fifty-three-year-old male housed at Fishkill RMU, diagnosis of cerebral vascular accident with right hemiplegia, H-E-M-I-P-L-E-G-I-A, and history of atrial fibrillation, PPM, hypertension, neurogenic bladder, hearing impaired, obesity, sleep apnea, and asthma. He uses a wheelchair to ambulate, requires assistance with his assisted daily living needs, he is not terminal, he is oxygen dependent. If medical parole is granted, he will need residential placement. Recommended for parole? And the doctor checked yes. The doctor recommends medical parole.

Now, during the interview with the Parole Board, the defendant expressed great remorse for his prior actions and

crimes. Shortly after the hearing, the Board granted the defendant medical parole; what is maybe prior terminology, medical parole, compassionate release.

Of course this Court is not bound by the Parole Board's conclusions, but is aware that, by statute, the Board must consider the impact of defendant's release on public safety, as does the Court in this instance.

I credit the testimony of Dr. Hammer. He substantiates the multiple serious health and physical mobility issues the defendant suffers from; and they include stroke, paralyzed on his right side, neurogenic bladder, severe degenerative joint disease, especially the lumbosacral spines, he has a TENS unit to relieve pain, he's got sleep apnea, he has a pacemaker for erythema, E-R-Y-T-H-E-M-A, obesity, and bilateral hearing loss.

Dr. Hammer testified credibly and strongly that the paralysis is not reversible, that his deficits are permanent.

He added that the defendant is able to transfer himself from bed to chair with minimal or no assistance, he can shower and can do most of the ADL, activities of daily living, without assistance; however, he only has use of his left arm, and needs help in pushing the wheelchair.

Dr. Hammer testified that the major physical conditions or limitations will not improve, that the

stroke, by this time, from the date of the stroke or strokes is irreversible. And the hearing, it can't be corrected; hearing aids will probably help.

And he certainly said that weight loss is possible, but Dr. Hammer said I don't expect him to gain any more mobility than he already has, that the joint disease isn't going away, and the bladder conditions aren't going away.

And the assistant district attorney is properly concerned about, among other things, the risk the defendant would present in an assisted living or nursing home to a vulnerable population.

The Court inquired of Dr. Hammer if the defendant is outside the prison system, if he gets great care, is defendant likely to retain use of the paralyzed portion of his body, paralyzed side of his body, and Dr. Hammer said no possibility, whatsoever, and no possibility that he wouldn't need a wheelchair to get around. And when he is out of the wheelchair, the defendant does not have the ability to move quickly, and he cannot remain standing for any prolonged period of time.

So, in conclusion, the Court believes the defense has identified, as a matter of law, a mitigating factor of the kind or degree not otherwise adequately taken into account by the SORA guidelines, and that is the defendant's medical conditions and concomitant physical limitations.

Further, the Court finds that these are factors which, if established, tend to establish a lower likelihood of reoffense or danger to the community, and are of the kind or degree that is otherwise not adequately taken into account by the guidelines.

Secondly, the Court concludes that defense has established the facts in support of these factors by a preponderance of the evidence; accordingly, the Court, in it's discretion, concludes that a downward departure is appropriate, is warranted in this case, and the ruling is that the defendant is a level 2 offender, not a level 3 offender.

Accordingly, the Court has prepared, pursuant to the SORA law, a copy that will be placed in the file, a copy will be given to each counsel.

The Court also finds, as it must, according to Correction Law 168-N1, that the defendant is a sexually violent offender.

And I want to make sure that the record reflects that defense counsel, and the defendant here, knows that he has a right to appeal this determination.

THE CLERK: Mr. Sanchez has thirty days in which to appeal the finding.

Counsel, we are furnishing you with a copy of the right to appeal.

P R O C E E D I N G S

MS. SPRINGER: Okay. I acknowledge receipt of that.

Do you hear that, Mr. Sanchez, you have a right to appeal?

Can they hear us?

THE COURT: Counsel?

MS. SPRINGER: Do you understand? Okay.

THE COURT: How do you want to handle correcting --

MS. SPRINGER: Can we do it in writing?

THE COURT: Sure.

MR. FILER: Sure.

THE COURT: If you disagree, Mr. Filer, you can file whatever you want.

MR. FILER: Of course.

THE COURT: Okay. Thank you.

This concludes everything. We are in recess.

* * * * *

I, Alexander Bent, hereby certify that the above is a true and accurate copy of my stenographic notes.

Alexander Bent
Senior Court Reporter